

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GEZA TOTH,

Plaintiff,

- against -

BOARD OF EDUCATION, et al.,

Defendants.

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ORDER

CV 07-3239 (SLT) (JO)

JAMES ORENSTEIN, Magistrate Judge:

Currently before me is the plaintiff's second motion to compel the defendants to produce certain discovery, filed on July 18, 2008 – two days after I resolved the plaintiff's first such motion. *See* docket entry ("DE") 54. The defendants responded in a letter dated July 23, 2008. DE 55. Having considered the parties' submissions, I now make the following rulings:

1. Interrogatory 1 is not reasonably calculated to lead to the discovery of admissible evidence, and the defendants therefore need not respond.

2. The defendants have already responded to Interrogatory 3; the fact that the plaintiff wants more specific information than the defendants possess as to the racial breakdown of the students in the program at issue is no basis for relief. Nor will I order the defendants, as the plaintiff requests, to "count the number of Chinese in each of the classrooms" based on his entirely unsupported – and objectively unreasonable – claim that teachers in the program are "clearly" able to identify each child's specific ethnic ancestry. *See* DE 54 at 2. I therefore deny as moot this portion of the motion to compel.

3. The defendants have already responded to Interrogatory 4 on at least four separate occasions, including at the July 16 conference before me. *See* DE 53. Once again, I note that the fact that the plaintiff does not wish to accept the answer as credible is no basis for relief, and

once again the plaintiff's counsel explicitly states that there is no specific form of relief he seeks based on his unwillingness to believe the defendants' response. I therefore deny as moot this portion of the motion to compel. Further, I invite the plaintiff's counsel's attention to Title 28, United States Code, Section 1927, in the hope that he will consider its provisions before making the assertion yet again that an unwillingness to believe opposing counsel's discovery responses, without more, is a basis for seeking relief.

4. The defendants have already responded to Interrogatories addressed to Diane Kay, and I therefore deny as moot this portion of the motion to compel.

5. The defendants have already responded to Document Request I, and I therefore deny as moot this portion of the motion to compel.

6. To the extent that Document Request N relates to the program at issue in this litigation, the defendants have already responded. To the extent that the request seeks information with respect to programs in other schools, it is not reasonably calculated to lead to the discovery of admissible evidence and the defendants need not respond. As to the documents bearing Bates stamp numbers D0061-D0062 that the defendants claim to have provided but the plaintiff says he did not receive, the parties will confer and attempt to resolve their dispute.

7. The defendants have already responded to Document Request Q, and I therefore deny as moot this portion of the motion to compel.

SO ORDERED.

Dated: Brooklyn, New York
August 7, 2008

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge